

# **STAFF RECOMMENDS DENIAL**

## **ORDINANCE NO.**

**AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 5906 CHERRY CREEK DRIVE FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF MODIFICATIONS TO A RESIDENCE IN THE 100-YEAR FLOODPLAIN; AND PROVIDING AN EXPIRATION DATE FOR THE VARIANCES.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** This ordinance applies to the enclosure and modification of an existing 260 square foot screened porch for use as living space in an existing house located at 5906 Cherry Creek Drive in the 100-year floodplain as described in Building Permit Application No. BP-07-138315RA.

**PART 2.** Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G105.6 (*Considerations*) and Section G105.7 (*Conditions for Issuance*). Council finds that the variances granted by this ordinance are the minimum necessary to afford relief, are based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variances granted in this ordinance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, or create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

**PART 3.** A variance is granted from:

- (A) the restriction on construction in the 100-year floodplain prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) the easement requirements in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*), to exclude the residence from the requirement to dedicate an easement to the limits of the 100-year floodplain;
- (C) the prohibition against placing an obstruction in a waterway prescribed by City Code Section 25-7-2 (*Obstruction of Waterways Prohibited*);
- (D) the prohibition against allowing a floor level or portion of a building or structure that is lower than one foot above the design flood elevation to be

1 used for residential or storage purposes prescribed by City Code Section 25-  
2 12-3, Building Code Section 1612.4.2 (*Provision of Safe Refuge*).

3 (E) the requirement that normal access to the building be by direct connection  
4 with an area at least one foot above the design flood elevation prescribed by  
5 City Code Section 25-12-3, Building Code Section 1612.4.3 (*Means of*  
6 *Egress*); and

7 (F) the prohibition against expanding, changing, enlarging, or altering a  
8 structure in a way which increases its nonconformity prescribed by City  
9 Code Section 25-12-3, Building Code Appendix G, Section G102.3  
10 (*Nonconforming Uses*).

11 **PART 4.** The variance granted in this ordinance is effective only if the applicant  
12 submits a completed certification to the City certifying that the existing structure and the  
13 proposed addition will withstand the flood forces generated by the 100-year flood and  
14 that the design and construction is in accord with the latest edition of the American  
15 Society of Civil Engineers Manual 24 (*Food Resistant Design and Construction*) signed  
16 by a Texas registered professional engineer or architect. The City may not issue a  
17 Building Permit for the proposed structure until the applicant submits the required  
18 certification.

19 **PART 5.** This variance expires if the project for which this variance is granted does not  
20 receive all necessary building permits before March 27, 2009.

21 **PART 6.** Approval of this variance does not constitute approval of zoning, subdivision,  
22 a site plan, a building permit, or any other development permit, and it does not constitute  
23 a commitment to any particular land use, intensity of land use, or utility services.  
24 Approval of this variance does not constitute a guarantee of flood insurance availability,  
25 rates, or requirements.

26 **PART 7.** This ordinance takes effect on \_\_\_\_\_, 2008.  
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**PASSED AND APPROVED**

\_\_\_\_\_, 2008

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\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk

DRAFT